



Planning & Development Department
Land Use Planning Division

NOTICE OF VIOLATION

December 7, 2018

[REDACTED]

KC's BBQ LLC c/o Kristen Davis
[REDACTED]

SUBJECT: 1235 San Pablo Avenue – Violation of Use Permit and Nuisance Ordinance

Dear Property Owners / Business Owners:

On January 18, 2018, the City issued Building Permit #B2018-00081 for the purpose of installing a branch circuit to provide electrical power to a plug-in barbeque smoker. On February 27, 2108, the City approved Administrative Use Permit (AUP) #ZP2018-0001 to legalize outdoor seating and alcohol service in the rear patio of the existing restaurant. On March 26, 2018, the City approved Zoning Certificate #ZCBL2018-143. On April 8, 2018, the City approved a Business License #BLA2017-001465 to transfer the operation of the restaurant from Meal Ticket to KC's BBQ.

Each of these permits were issued for the property located at 1235 San Pablo Avenue in Berkeley based on the representations of you or your authorized agent as to the purpose, character and extent of the construction and activities that were to occur at the property. In particular, the smoker was represented to be of a highly controllable pellet fuel design. The conditions of approval for the AUP explicitly state that the operation shall not create objectionable smoke or odor.

The City is issuing this Notice of Violation (NOV) because the City has received complaints and has observed the operation of the outdoor smoker to be generating smoke and odor that is in violation of the basis for issuing the permit, the findings, and the conditions of approval for the AUP and is a nuisance.

YOU ARE HEREBY ORDERED TO CEASE AND DESIST FROM OPERATING THE OUTDOOR SMOKER UNTIL THE VIOLATION HAS BEEN CORRECTED.

Compliance must be had within 14 days, as set forth in BMC Chapter 1.24, Abatement of Nuisances. You have a right to file an appeal within 15 days of this notice if you seek to challenge the charge that a nuisance exists. Failure to appeal shall constitute a waiver of your right to an administrative hearing to contest the charge of nuisance. You may file your appeal at the Permit Service Center, 1947 Center Street, Third Floor, Berkeley, CA 94704, during regular business hours.

YOU MAY TAKE THE FOLLOWING STEPS IN RESPONSE TO THIS NOTICE:

- Operate the smoker in a manner that does not result in readily visible smoke and does not cause a nuisance to the neighbors.
- Install additional smoke control equipment to reduce smoke to a level that is not readily visible and does not cause a nuisance to the neighbors.
- Cease operation of the outdoor smoker and install controlled indoor cooking equipment.
- Otherwise cure the violation.
- Appeal the notice of violation.

This NOV may be lifted only upon satisfaction of these requirements. You will be notified of any such action in writing. This NOV remains in effect until you are so notified.

FAILURE TO COMPLY

Use Permits are subject to review, modification, or revocation as set forth in BMC Chapter 23B.60. Proceedings may be initiated by the Zoning Officer, Zoning Adjustments Board, or City Council. You will be notified of any public hearing that may be conducted for this purpose.

Violations of BMC Title 23 may be charged as either an infraction or a misdemeanor at the election of the enforcing officer or by the City Attorney. Violations may subject you to legal action by the City Attorney to abate, remove and enjoin violations, including enjoining any person from maintaining any building or structure in violation of Title 23. The city may recover the costs of any nuisance abatement. (BMC Section 23B.64.010, 060, 070.)

CITATIONS

If you do not correct the violations described above within the time periods set forth, you may be issued administrative citations for violating the BMC pursuant to Chapter 1.28. **You may be cited for a separate violation for each day that the violation exists.** Penalties will begin at a rate of one hundred dollars (\$100.00) per violation, per day and may increase with subsequent citations to two hundred dollars (\$200.00) per violation, per day and five hundred dollars (\$500.00) per violation, per day.

LIENS

The property may also be liened in the amount of any outstanding administrative penalties and for costs of abatement if the City is forced to abate public nuisance at the property, as noted above.

This notice of violation must be included in all communications with the City of Berkeley. You may request an electronic copy of this notice of violation by e-mailing Steven Buckley, Planning Manager, at stbuckley@cityofberkeley.info.

If you have any questions regarding this notice of violation you may contact Steven Buckley at (510) 981-7411.

Sincerely,



Steven Buckley
Planning Manager